Y 1.1/8:97-904

97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 97-904

COMPLETED ORIGINAL

AUTHORIZING THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN LANDS NEAR MILES CITY, MONT., AND TO REMOVE CERTAIN RESERVATIONS FROM PRIOR CONVEYANCES

SEPTEMBER 30, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 187]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 187) to authorize the Secretary of the Interior to convey certain lands near Miles City, Mont., and to remove certain reservations from prior conveyances, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert in lieu thereof the following:

That (a) the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") shall convey by patent to the city of Miles City, Montana (hereafter, referred to as the "city"), all right, title, and interest, except for those interests described in subsection (b) of this section, of the United States in and to the following lands in Custer County, Montana, in range 47 east of the principal meridian, Montana: In township 8 north, lots 9, 17, 21, 28, 31, and 32 in section 32 and in townships 7 and 8 north, tract Q and tract S.

(b) Any patent issued pursuant to subsection (a) of this section shall contain a reservation to the United States of all gas, oil, coal, and other minerals that may be found in such lands, and the right to prospect for, mine, and remove such minerals, and that patents shall also contain any other reservations required by law.

(c) Any patent issued pursuant to subsection (a) of this section shall provide that if the land is transferred or conveyed by the city, the proceeds of such sale shall be paid to the United States, to be distributed in accordance with section 4 of this Act.

SEC. 2. (a) The Secreatry shall take such actions as are necessary to convey to the city the reversionary interests of the United States contained in the patents which conveyed to the city of Miles City, Montana, the lands described in subsection (b) of this section. Such reversionary interests arise when the patentee/

89-006 O

Y1.1/8:97-904

grantee violates provisions which (1) require that such lands be used for specified purposes, or (2) prohibit transfer of such lands by the patentee/grantee. All documents of conveyance issued under this subsection shall provide that if the land is conveyed by the city, the proceeds of sale shall be paid to the United States, to be distributed in accordance with section 4 of this Act.

(b) The lands referred to in subsection (a) of this section are the following tracts in range 47 east of the principal meridian, Montana: In townships 7 and 8 north, tracts A and B (conveyed by patent numbered 1,021,511), tracts E and F (conveyed by patent numbered 1,122,295), tract G (conveyed by patent numbered 1,173,770), tract K (conveyed by patent numbered 1,173,768), tract L (conveyed by patent numbered 1,173,769), tract M (conveyed by patent numbered 1,178,764), tract P (conveyed by patent numbered 1,219,817), and tract D (conveyed by the grant made by the Act of July 30, 1890 (26 Stat. 292), Lots 16 and 17, Section 33 conveyed by patent numbered 25–81–0094).

SEC. 3. (a) The Secretary shall take such actions as are necessary to convey to the holder of the patent the reversionary interests of the United States contained in the patents which conveyed to the county of Custer, Montana, the lands described in subsection (b) of this section. Such reversionary interests arise when the patentee violates provisions which (1) require that such lands be used for specified purposes, or (2) prohibit transfer of such lands by the patentee. All documents of conveyance issued under this subsection shall provide that if the land is conveyed by the patentee, the proceeds of such sale shall be paid to the United States, to be distributed in accordance with section 4 of this Act.

(b) The lands referred to in subsection (a) are the following parcels in range 47 east of the principal meridian, Montana: In townships 7 and 8 north, tract C (conveyed by patent numbered 1,023,689) and tract T (conveyed by patent numbered 25–76–0099), and in township 8 north, lot 20 in section 33 (conveyed by patent numbered 25–76–0100).

SEC. 4. (a) Notwithstanding any other provision of law, if the city or any other patentee or grantee transfers any lands described in this Act, such transfer shall be at fair market value for the land and improvements thereon.

(b) Proceeds from the sale of the land, excluding the value of any improvements on the land and less any sums paid to the United States at the time of original conveyance out of federal ownership, shall be deposited in the general fund of the Treasury of the United States, to be distributed as follows: At the end of each Federal fiscal year, the United States shall return 5 per centum of the net receipts collected in that fiscal year from the sale of lands described in this Act to the State of Montana, and 10 per centum of such receipts to the county or the city in which the lands are located in amounts proportional to the receipts generated from the sale of such land in each county or city during the fiscal year.

SEC. 5. All documents of conveyance issued pursuant to this Act shall be subject to valid existing rights.

PURPOSE

This bill provides for the transfer of the federal interests in about 708 acres of land within or adjacent to Miles City to Miles City and Custer County, Montana.

BACKGROUND AND NEED

Beginning in 1890, 491.64 acres of public land, consisting of 24 different parcels predominantly located in flood plain, were conveyed to, or authorized to be used by, Miles City under various patents, leases, special Acts of Congress, and special use permits. Of this, 275.28 acres have since been patented, with the United States retaining reversionary interests in the event the lands were ever used for purposes other than those specified in the patents. An additional 43.34 acres were granted to the Chicago, Milwaukee and St. Paul Railway Company in 1906 as rights-of-way for specified uses, again with provision for reversion to the United States should any portion of the lands cease to be used for the intended purpose. The remaining 173.02 acres are

currently subject to Recreation and Public Purposes Act leases containing similar provisions for termination of the lease.

All the tracts are currently being used. However, many of the uses deviate from or are in addition to the original authorizations, and therefore technically constitute illegal trespass. Examples of these unauthorized and non-conforming uses include two tracts which were conveyed in 1924 for municipal purposes as a public park, but are currently used for an emergency water tower and an American Legion Hall and lands conveyed for industrial and recreation purposes but are now utilized for State offices.

The lands covered by the bill are all being used for purposes which benefit the people of Miles City. However, in every instance by operation of law, title should revert back to the Federal Government. These technical use restrictions in the original authorizations apply, even though BLM has determined there is no Federal need for the lands.

Enactment of S. 187, as amended, would remove this cloud from the title of the city and county. It would also reduce the burden on BLM resources resulting from the present status of the lands in question.

THE COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute which is essentially identical to the text of H.R. 4654 and is described in more detail in the Section-by-Section portion of this Report.

SECTION-BY-SECTION ANALYSIS

As reported, the bill is in five sections.

Section 1 provides, in subsection (a), for the transfer to the city of Miles City, Montana, all right, title, and interest of the United States (except for certain listed interests) in certain described lands. Subsection (b) requires the reservation to the United States of the mineral rights in the lands described in subsection (a) and that patents for such lands shall also contain any other reservations required by law. Subsection (c) requires that patents for the lands described in subsection (a) must provide that if the city transfers or conveys the lands the proceeds are to be paid to the United States in accordance with section four.

Section 2, in Subbsection (a), rqeuires the Secretary to convey to Miles City the reversionary interests of the United States contained in the patents which conveyed to the city the lands described in subsection (b), and that the conveyance documents will provide that if the city conveys the land, the proceeds are to be paid to the United States in accordance with section four. Subsection (b) describes the lands affected by the section.

Section 3, in subsection (a), requires the Secretary to convey to the patentee the reversionary interests of the United States contained in certain patents which conveyed to Custer County, Montana, the lands described in subsection (b), and provides that conveyance documents for such reversionary interests must provide that if the patentee conveys the lands, the proceeds will be paid to the United States pursuant to section four. Subsection (b) described the lands affected by this section.

Section 4, in subsection (a), requires that, nowithstanding any

other provision of law, if the city, the county, or other patentee or grantee transfers any lands described in this bill, such transfer shall be at fair market value for the land and improvements. Subsection (b) requires that the proceeds from any such transfer, excluding the value of any improvements and less any sums paid to the United States at the time of original conveyance out of federal ownership, is to be distributed among the State of Montana (5% of net receipts per fiscal year), the county or city in which the lands are located (10% of net receipts per fiscal year), and the general fund of the federal Treasury (the remainder).

Section 5 provides that all documents of conveyance issued under this bill are to be subject to valid existing rights.

OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs will have continuing responsibility for oversight of the implementation of this bill when enacted. No reports or recommendations were received by the Committee pursuant to Rule X, clause 2(b)(2) of the Rules of the House of Representatives.

LEGISLATIVE HISTORY AND COMMITTEE RECOMMENDATION

The Senate passed S. 187 on September 22, 1981. As passed, the Senate bill would have required that Miles City and Custer County pay to the United States the fair market value of the interests to be transferred to the city and the county. Such a requirement apparently was prompted by the Administration's "Asset Management Program" and the policy that the federal government insist upon receipt of fair market value for any federal interests transferred out of federal ownership. By a Departmental Report dated December 3, 1981, the Administration indicated that because the Senate bill did include the requirement for payment of fair market value, it would have no objection to its acceptance by the House.

Subsequently, however, the Committee received an additional Departmental Report, dated September 2, 1982, on both S. 187 and on H.R. 4654. That report noted that the House bill dealt with the same lands but would require payment to the U.S. Treasury only in the event that the lands are ever sold by the city or county, and stated that the Administration believes that the House bill would be the better alternative.

The Subcommittee on Public Lands and National Parks held a hearing on S. 187 and H.R. 4654 on September 17, 1982. On September 23, 1982, the Subcommittee adopted an amendment in the nature of a substitute and favorably referred the bill, as so amended, to the full Committee. The Committee on Interior and Insular Affairs on September 29, 1982, ordered the bill, as amended, reported favorably to the House, by a voice vote.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee finds that enactment of S. 187 as amended will have no inflationary impact on the national economy.

COST AND BUDGET ACT COMPLIANCE

S. 187 authorizes no appropriations and should not involve significant costs to the federal government. The Committee believes that the savings resulting from reduced management expenses will exceed the costs of implementation within a short time. The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 30, 1982.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 187, a bill to authorize the Secretary of the Interior to convey certain lands near Miles City, Montana, and to remove certain reservations from prior conveyances, as ordered reported by the House Committee on Interior and Insular Affairs, September 29, 1982.

The bill directs the Secretary of the Interior to convey to the city of Miles City, Montana, eight lots of land and to remove the reversionary provisions from the patents of certain lands previously conveyed by act of Congress to Miles City or Custer County, Montana. The right to use the land being conveyed to extract gas, oil, coal, and other mineral deposits is retained by the federal government. The bill stipulates that if any of the land affected by the bill is transferred out of public ownership, all proceeds are to be paid to the United States and distributed according to a specified formula.

According to information from the Bureau of Land Management, it is expected that enactment of this bill will result in no significant additional costs or revenues for the federal government.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Alice M. Rivlin, Director).

DEPARTMENTAL REPORTS

The reports of the Department of the Interior (previously referred to) follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 3, 1981.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 187, an act "To authorize the Secretary of the Interior to convey certain lands near Miles City, Montana, and to remove certain reservations from prior conveyances."

We would have no objection to enactment of S. 187.

S. 187 would direct the Secretary of the Interior to convey to Miles City, Montana, certain tracts that are for the most part already in authorized use. The act also would direct the Secretary to convey "such evidence as is necessary to remove the reversionary provisions for public lands previously patented" to Miles City or Custer County, Montana. The act would require that conveyances of title and documents removing the reversionary provisions from patents contain a reservation to the United States of all minerals, together with a right to remove them. Conveyances would not be made under the act until payment is made for the fair market value of the interest conveyed.

It has long been established Congressional and Departmental policy that in cases where the Federal Government has conveyed public land at less than fair market value, the document of conveyance shall contain a provision for reversion of title to the United States if the lands cease to be used for the purpose for which they were conveyed. This has been true whether the lands were conveyed in accordance with a general statute, such as the Recreation and Public Purposes Act (43 U.S.C. 869–869–4) or special, private legislation. It has also been long-established Congressional and Departmental policy that the reversionary provisions can be removed, so that the land can be used by the patentee for any purpose, only if no public need is found for the land, and if fair market value is paid for the interest being released by the United States. We have no Federal need for the lands to which S. 187 would apply and the act contains a provision for payment of fair market value for the interests conveyed. In light of this, we have no objection to the conveyances that would be made under the act.

S. 187 divides the numerous parcels it applies to into three groups: those to be conveyed to the city of Miles City, those already patented to Miles City with a reverter, and those already patented to Custer County with a reverter. In each of these categories there are significant differences in the manner of acquisition and nature of the patent. We believe it would be helpful to set out what these differences are.

The first section of S. 187 would authorize and direct the conveyance of certain parcels of lands, without any reverter provision. These parcels fall into distinct groups as follows:

(1) By the Act of March 3, 1911 (36 Stat. 1027), Miles City was authorized to use Lots 9, 17, and 21, Sec. 32, containing a total of 50.28 acres, for a pumping station. The current plant facility was constructed in the late 1960's on Lot 21, at a cost of approximately $1,000,000. A former pumping station located on Lot 9 is now used as an Art and Heritage Center by the City. There is no Federal need for these tracts, nor does there appear to be a need for Lots 9 and 17 for pumping station purposes. A lease under the Recreation and Public Purposes Act covering all three tracts has been issued to the City. There is also an application for patent of these tracts under that authority.

(2) Lots 28, 31, and 32 and Tract Q, containing a total of 43.34 acres, are covered by road and railroad rights-of-way. The railroad right-of-way is the primary use of the tracts and the grazing of horses by Bureau of Land Management permittees on the remaining portion is the only other known use. The railroad grant includes station ground, livestock loading facilities and a rendering plant within the right-of-way limits. There are livestock corrals on Lot 32 that were

built without authority. Conveyance of the lands under S. 187 would be subject to the rights-of-way.

(3) Lots 16 and 17, Sec. 33, T. 8 N., 47 E., contain 3.95 acres which were omitted from a previous survey. Both lots adjoin Tract A, which is included in section 2 of the act. That tract was patented to Miles City in 1928 under a special Act which limited use to municipal purposes as a public park and required a reverter provision. Lots 16 and 17 were classified as suitable for conveyance under the Recreation and Public Purposes Act. Lot 17 is partially encumbered by recreational improvements originally intended to be on Tract A.

(4) Tract S, containing 122.74 acres, has been developed by Miles City as the Spotted Eagle recreation site under a Recreation and Public Purposes lease issued October 5, 1966. An application to patent the area to the City under the Recreation and Public Purposes Act, at less than fair market value, is currently pending before the local office of the Bureau of Land Management.

Section 2 of S. 187 would direct the Secretary to convey to Miles City such evidence as is necessary to remove the reversionary provisions in certain previous land conveyances. The parcels listed in this group were originally conveyed to Miles City under varying circumstances that fall into four general groups, as follows:

(1) Tracts A and B, Sec. 33, T. 8 N., R. 47 E., containing 36.49 and 1.67 acres respectively, were conveyed to Miles City by patent number 1021511 on December 12, 1928. They were conveyed under a special Act of April 15, 1924 (43 Stat. 96) for municipal purposes as a public park, upon payment of $1.25 per acre. This land has been used by the city as a public park as required by the 1924 Act and the patent.

(2) Tract E, Sec. 32, T. 8 N., R. 47 E., containing 37.26 acres and Tract F, Secs. 32 and 33, T. 8 N., R. 47 E., containing 25.78 acres, were conveyed on May 21, 1947, by patent number 1122295, pursuant to the Act of August 8, 1946 (60 Stat. 946), upon the condition that they be used for industrial and recreational purposes and a specific portion as a museum site. The City was not required to make any payment for the land, but it was bound by the specific use restrictions of the 1946 Act, and the patent contained a reverter to the United States.

(3) Tract D, Sec. 33, T. 8 N., R. 47 E., containing 12.32 acres, was granted to Miles City by the Act of July 30, 1890 (26 Stat. 292). While there is no document of conveyance for this parcel, the Act of Congress served to convey title subject to a use restriction.

(4) The remaining tracts listed in section 2 were all transferred under the authority of the Act of June 16, 1950 (64 Stat. 233), as amended (69 Stat. 395). Section 2 of that Act authorized conveyance to Miles City of two tracts to be used for industrial purposes with a reverter to the United States. Conveyance of any or all of these latter tracts was also conditional upon payment of reasonable consideration". . . determined by the Secretary of the Interior on the basis of use for industrial purposes". Five parcels, representing a portion of these two tracts, were conveyed under this provision.

Section 3 of S. 187 would direct the Secretary to convey to Custer County, Montana, evidence of title necessary to remove the reversionary provisions in three patents. Tract C, Secs. 3 and 5, T. 7 N., R. 47 E., was conveyed on February 12, 1929, under a special Act of April 15, 1924 (43 Stat. 97). It now contains 92.276 acres, 3.614 acres of the

original grant having been reconveyed by the County to the United States. The 1924 Act required payment of $1.25 per acre and a reverter to the United States should the land cease to be used as a fairground or if the County should attempt to sell or oherwise convey the lands. As with all similar conveyances to Miles City or Custer County, all minerals were reserved to the United States. The two adjoining parcels, Tract T containing 0.96 acres and Lot 20 containing 3.38 acres, are also used in conjunction with the County Fairground.

In summary, we have no Federal need for the parcels to which S. 187 would apply and no objection to conveyance of the lands, or removal of the reverter provisions, upon payment to the United States of the fair market value of the interests conveyed. Since S. 187 would require such payment, we have no objection to enactment of the act.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

FRANK A. DUBOIS,
Acting Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 2, 1982.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 4654 and S. 187, legislation to, convey certain lands and to remove certain restrictions from certain previous conveyances of lands in Miles City and Custer County, Montana.

We recommend enactment of H.R. 4654, with the technical amendment suggested herein.

H.R. 4654 would direct the Secretary of the Interior to convey by patent to the City of Miles City, Montana, all right, title or interest of the United States in those tracts of land as described in the bill. Minerals would be reserved to the United States. The bill also directs the Secretary to convey by patent any reversionary interests contained in patents issued previously to Miles City. These reversionary interests arise when the patentee violates use provisions in the patents or transfers the lands. The bill contains similar requirements for conveyance to Custer, Montana, of reversionary interests retained by the United States in several described patents. All conveyances would be subject to valid existing rights.

S. 187 deals with the same lands as H.R. 4654, but would require payment of fair market value before any conveyance could be made. H.R. 4654 would require payment to the U.S. Treasury only in the event the lands are ever sold by the City. We believe that H.R. 4654 is a better alternative than S. 187 in this situation.

Beginning in 1890, 491.64 acres of public land, consisting of 24 different parcels predominantly located in flood plain, were conveyed to, or authorized to be used by, Miles City, Montana, under various patents, leases, special Acts of Congress, and special use permits. Of this, 275.28 acres have since been patented, with the United States retaining

reversionary interests in the event the lands were ever used for purposes other than those specified in the patents. An additional 43.34 acres were granted to the Chicago, Milwaukee and St. Paul Railway Company in 1906 as rights-of-way for specified uses, again with provision for reversion to the United States should any portion of the lands cease to be used for the intended purpose. The remaining 173.02 acres are currently subject to Recreation and Public Purposes Act leases containing similar provisions for termination of the lease.

All tracts are currently being used. However, many of the uses deviate from or are in addition to the original authorizations, and therefore constitute illegal trespass. Examples of these unauthorized and non-conforming uses include:

Two tracts containing a total of 38.16 acres, were conveyed in 1924 for municipal purposes as a public park. Current uses include location of an emergency water tower and the American Legion Hall.

Two tracts were conveyed in 1946 upon the condition that they be used for industrial and recreational purposes and a specific portion as a museum site. The District 7 headquarters of the Montana Department of Fish, Wildlife and Parks is now located on the land.

By a special Act of Congress in 1911, Miles City was authorized to use 50.28 acres contained within the Ft. Keogh Military Reservation for a pumping station. The land is now used as a public park and public fishing access to the Yellowstone River, as well as a water plant. The original pumping facility has been converted to an Art and Heritage Center.

The lands involved in this situation are all being used for purposes which benefit the people of Miles City. However, in every instance title should revert back to the Federal Government under the technical use restrictions in the original authorizations.

The Bureau of Land Management has determined there is no Federal need for the land covered by this legislation. H.R. 4654 would release the reversionary provisions involved, ending continued Federal involvement with the lands. At the same time, the payment provisions of the bill assure that the United States will be adequately compensated for the lands and the reversionary interests being released by requiring payment to the United States Treasury should the lands ever be sold to private owners.

Identifying the reserved interests of the United States in each case, and establishing the fair market value of those interests, as S. 187 would require, would be a slow and extremely expensive exercise that has the potential of generating continuing controversy over both identity and valuation.

The option of enforcement of the reverter provisions is impractical in this case. The costs associated with such enforcement actions would be prohibitive. These would include the costs of extensive litigation as well as the burdensome cost of identifying and valuing the interests actually held by the United States. The total cost would certainly far exceed the value of these interests to the United States.

Administrative resolution through applications for changes in use is equally impractical. Under current administrative regulations, an application for change of use would be required for each existing tres-

pass and for any future change in use. Every tract is affected, often with more than one instance of non-compliance. The burden that would be created by requiring an administrative resolution would exceed any benefit the United States would ever receive from the lands. Finally, because the administrative process is not available with respect to lands patented by special legislation, the situation would not be capable of full administrative resolution.

As noted above, mineral interests in the parcels conveyed under the first section of the bill would be reserved to the United States. To conform this reservation more closely with similar provisions, we recommend that on page 2 of H.R. 4654, lines 6 through 8 be amended to read as follows: "gas, oil, coal, and other minerals that may be found in such lands and the right to prospect for, mine, and remove such minerals."

In conclusion, H.R. 4654 would give Miles City and Custer, Montana, the titles they seek so that they can use the lands for purposes they consider appropriate, without fear of the reverter provisions coming into operation and title reverting to the United States. If, however, the patentees sell the lands, 85% of the receipts would be returned to the United States. The State would get 5% and the city or county in which the lands are located would get 10%. Thus, under the provisions of the bill, Federal interests are protected and no windfall is created for the State, county or city.

Under these circumstances ,where there is no Federal need for any of the lands involved, the lands are suitable for disposition and the identification and valuation of the interests involved would be a lengthy and expensive process, we believe that enactment of H.R. 4654 would be to the benefit of all parties concerned.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

GARREY E. CARRUTHERS,
Assistant Secretary.

O